



**Randwick City  
Council**  
a sense of community

## **WORKS COMMITTEE MEETING**

### **BUSINESS PAPER**

**TUESDAY 12 APRIL 2016**

Administrative Centre 30 Frances Street Randwick 2031  
Telephone: 1300 722 542  
Fax: 02 9319 1510  
[council@randwick.nsw.gov.au](mailto:council@randwick.nsw.gov.au)  
[www.randwick.nsw.gov.au](http://www.randwick.nsw.gov.au)





## WORKS COMMITTEE MEETING

Notice is hereby given that a Works Committee Meeting of the Council of the City of Randwick will be held in the Council Chamber, First Floor, 90 Avoca Street Randwick on Tuesday, 12 April 2016 at 6:00 p.m.

Committee Members: The Mayor D'Souza, Andrews, Belleli, Bowen, Garcia, Matson, Moore (Deputy Chairperson), Nash, Neilson, Roberts, Seng, Shurey, Smith, Stavrinou & Stevenson (Chairperson)

Quorum: Eight (8) members

NOTE: At the Extraordinary Meeting held on 28 September 2004, the Council resolved that the Works Committee be constituted as a committee with full delegation to determine matters on the agenda.

### **Apologies/Granting of Leave of Absences**

### **Confirmation of the Minutes**

Works Committee Meeting - 8 March 2016

### **Declarations of Pecuniary and Non-Pecuniary Interests**

### **Address of Committee by Members of the Public**

*Privacy warning;*

*In respect to Privacy & Personal Information Protection Act, members of the public are advised that the proceedings of this meeting will be recorded for the purposes of clause 69 of Council's Code of Meeting Practice.*

### **Urgent Business**

### **Works Report**

W12/16 18 Judge Street, Randwick - Private retaining wall..... 1

### **Notice of Rescission Motions**

Nil

.....  
Ray Brownlee  
**GENERAL MANAGER**



## Works Report No. W12/16

**Subject:** 18 Judge Street, Randwick - Private retaining wall

**Folder No:** F2013/00369

**Author:** Stephen Audet, Coordinator Engineering Services



### Introduction

The retaining wall on the eastern boundary of 18 Judge Street is cracked and bulging and is in the process of failing. Council has isolated the adjacent footpath and stairs until the wall is repaired or made safe. The owner of 18 Judge Street has made numerous approaches to Council for contributions towards some or all of the costs associated with rebuilding the wall.

This report outlines the details of the damaged retaining wall, the responsibilities of parties and the outcome of the investigation undertaken by council officers.

### Issues

#### The Site and Surrounding Land

The land around 18 Judge Street is characterised by a sharp drop in topography. Judge Street is separated into 2 sections due to the topography of the land that is cut by a sandstone cliff. Access between the 2 sections of Judge Street is only available for pedestrians via public stairs and a walkway. An aerial view of this arrangement is shown below.



**W12/16**

The properties on the western side of Judge Street along the sandstone cutting, including 18 Judge Street, are high to the west, falling significantly to lower ground at the Judge Street frontage. The natural slope of the land is therefore described as sloping both from south to north and from west to east.

The properties in this vicinity have land that is sloping to various degrees depending on their position on the hillside. 18 Judge Street is an exception because of a substantial sandstone retaining wall constructed on both its boundary with Judge Street and its northern boundary which is the common boundary with 16 Judge Street. These retaining walls provide 18 Judge Street with a level front yard in this steep environment.

The public stairs, the wall supporting the stairs and the property retaining walls along both boundaries were assessed by Council's Heritage Consultant in 2009 as having heritage value. The stairs and walls were subsequently included on the Heritage List within the Randwick Local Environmental Plan, 2012, with a Local level of significance.

#### Background

In 2013, Council staff was alerted to the deteriorating condition of the sandstone retaining wall along the frontage of 18 Judge Street. The retaining wall was inspected and in the interests of public safety, it was deemed necessary to isolate the stairs and walkway below the wall.

W12/16



**Photograph of Retaining Wall, Stairs and adjacent property**

Council staff assessed the location and purpose of the retaining wall. It was determined that the sandstone retaining wall was constructed to retain a level front yard within 18 Judge Street and not serving a public function. The wall was deemed to be part of 18 Judge Street and therefore privately owned. Council staff notified the owner of 18 Judge Street about the condition of the wall and requested that the wall be repaired so that the public access could be reinstated. Between September 2013 and January 2014, the owner made numerous approaches to Council with relation to the cause of failure and seeking funding contributions for the reconstruction of the wall. A summary of the owner's basis for Council to contribute to the cost is included in table 1.

<b>Owner's Claim for Council Contribution</b>	<b>Council review of Owner's Claim</b>
Council's Heritage Data Form for the Judge Street Stairs (2009) nominates Council as the owner.	<p>The Heritage Data Form was written by a heritage consultant. It is not a legal opinion.</p> <p>Responsibility for retaining structures is determined based on land ownership and the benefit obtained from the structure.</p> <p>Council assessed the wall to be on 18 Judge Street and benefitting only 18 Judge Street.</p>
Council's Heritage Data Form for the Judge Street Stairs (2009) nominates Council as the builder of the wall.	<p>The author of the Heritage Data Form has confirmed that they made assumptions about the construction using secondary sources and judgement.</p> <p>A 1938 drawing of the proposed steps shows an existing wall at this location, along with existing steps and a landing. The drawing shows the extension of these steps and the construction of new walls on the outside (eastern side) of the steps.</p>

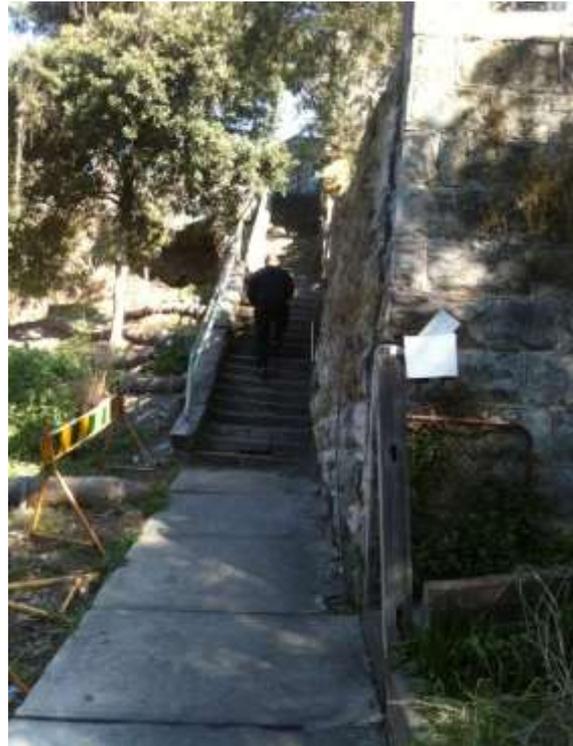
**W12/16**

W12/16

<b>Owner's Claim for Council Contribution</b>	<b>Council review of Owner's Claim</b>
	<p>The property at 18 Judge Street was developed in 1928. An aerial photo from 1930 shows the dwelling in existence and also a crisp line in the location of the existing retaining wall which casts a shadow in the shape of the wall.</p> <p>An inspection by an experienced stonemason found the stones used in the stair wall to be different in shape to the stones used in both the boundary wall and also walls located within 18 Judge Street. The stonemason also identified differences in the bedding mortar and the pointing between the boundary wall and the wall on the outside of the stairs.</p> <p>It can now be reasonably concluded that the boundary retaining wall at 18 Judge Street was in existence prior to the construction of the Council steps.</p>
<p>A Council stormwater pipe failure played a role in the degradation of the wall's condition.</p>	<p>Council's stormwater pipe overflowed during a significant storm in the rear yard of 1A Ada Street at a location approximately 60m west of the wall.</p> <p>The Coogee Bay Flood Model confirms that the stormwater pipe's capacity is exceeded in the 1 in 5 year storm, causing water to flow overland along this flow path. This confirms that the wall is located on a natural and active flow path.</p>

The owner of 18 Judge Street did not accept Council's assessment of responsibility and lodged a claim with Council's insurer which was subsequently denied.

To manage public safety and to reinstate public access, it was determined to serve a notice of intention to serve an Order upon the owner on 24 March 2015. The owner was invited to make representations in relation to the proposed Order to repair or replace the wall.



**W12/16**

On 31 March 2015, the owner made representations to Council including a request that Council refrain from issuing the Order because the owner was in the process of seeking a review of Council staff's opinion. The owner maintained that it was Council's responsibility to repair the wall. On 2 April 2015, the owner sent an email to General Manager and Councillors.

Consequently, it was determined to seek legal advice on the owner's behalf in respect to responsibility and liability in this matter.

### Legal Advice and Structural Assessment

The initial legal advice suggested that “potentially” Council may have a responsibility in relation to the dilapidated wall.

To clarify one area of uncertainty, a boundary survey was undertaken which confirmed that the wall is located within the property at 18 Judge Street.

Subsequent legal advice confirmed that Council is not reasonably liable unless it has somehow contributed to the cause of failure.

A structural assessment of the wall was undertaken in October 2015. The structural report concluded that the mechanism of failure is a combination of foundation settlement and excessive earth pressure. The wall structure was measured and found to be inadequate for the height of the wall. The settlement issues were reported as being likely due to inadequate wall footings.

Council officers acknowledge that the reconstruction of the retaining wall may impact on the Council stairs. These stairs are in need of some maintenance and funding can be sourced from the Retaining Walls and Railing Program in the capital works program. The work would include the laying of new sandstone stair treads following completion of the sandstone retaining wall works.

### **Relationship to City Plan**

The relationship with the City Plan is as follows:

Outcome 6: A Liveable City.  
Direction 6a: Our public assets are planned and funded to meet the community expectations and defined levels of service.

### **Financial impact statement**

It is estimated that the cost of reconstructing the sandstone retaining wall is in excess of \$300,000. However, the assessment concluded that this cost is the responsibility of the property owner that benefits from the retaining wall.

It is estimated that the cost of sourcing and installing sandstone stair treads is \$50,000. The funding for this work can be funded from the 2016-17 Retaining Walls and Railing Program.

### **Conclusion**

Having become aware of damage to the retaining wall at 18 Judge Street, Council officers took action to protect the public by closing the public footpath and stairs adjacent to the wall.

The owner was contacted and requested to undertake repairs to the retaining wall. The owner subsequently made a claim requesting that Council contribute towards the reconstruction of the wall. The claim suggested that the retaining wall was built by Council at the same time as the public sandstone stairs and that the wall had been damaged by Council's stormwater and overland flow.

Council staff have followed due process in considering the points raised by the owner of 18 Judge Street with regards to properly determining responsibility for reconstructing the wall.

The retaining wall at the eastern boundary of 18 Judge Street has been found to be located on private land as confirmed by a registered surveyor. The purpose of the

wall is also assessed as not serving a public purpose but to retain soil to level the front yard of the property.

Other observations include:

- The wall along the front boundary continues around and along the northern boundary.
- The wall was in existence in 1930 however the stairs were constructed in 1938.
- The techniques used to construct the retaining wall differ from the techniques used to construct the wall on the outside of the sandstone stairs within public land.

Legal advice supports the view that Council is not liable for the reconstruction of the wall unless it has somehow contributed to the cause of failure. A structural engineer's report confirms that the wall is failing because it is not built to a standard to continue to retain the land behind the wall.

The investigation concluded that the wall is privately owned and that Council has not contributed to the cause of failure.

### **Recommendation**

That :

- a) Council issue an Order to the owner of 18 Judge Street to obtain a structural design and reconstruct the heritage retaining walls as required to support their land along the Judge Street frontage.
- b) Council commit to funding the reconstruction of any stair treads that may be required to be removed to facilitate the reconstruction of the wall.

### **Attachment/s:**

Nil

**W12/16**